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LADAS & PARRY
26 WEST 61ST STREET
NEW YORK NY 10023

In re Application of :
CADUFF et al. :
Application No.: 10/580,209 : DECISION
PCT No.: PCT/CH2004/000077 :
Int. Filing Date: 10 February 2004 :
Priority Date: 02 December 2003 :
Attorney Docket No.: U 016310-9 :
For: A DEVICE AND METHOD FOR MEASURING :
A PROPERTY OF LIVING TISSUE :

This is a decision on applicants' renewed petition under 37 CFR 1.47(a) filed 28 September 2007 in the United States Patent and Trademark Office (USPTO). The petition is **GRANTED**.

BACKGROUND

On 10 February 2004, applicants filed international application PCT/CH2004/000077, which designated the United States and claimed a priority date of 02 December 2003. A copy of the international application was communicated from the International Bureau to the USPTO on 16 June 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 02 June 2006.

On 22 May 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage.

On 09 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 05 April 2007, applicants filed a petition under 37 CFR 1.47(a).

On 10 May 2007, a decision was mailed dismissing applicants' petition under 37 CFR 1.47(a) without prejudice for failing to provide factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, failing to provide a

statement of the last known address of the missing inventor, and for failing to provide an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

On 10 July 2007, applicants filed a renewed petition under 37 CFR 1.47(a).

On 09 August 2007, applicants filed a supplemental submission including numerous letters between Kurt Sutter and non-signing inventor Pascal Truffer and English translations thereof. The submission also included a signed statement of facts by Mr. Sutter.

On 05 September 2007, a decision was mailed treating both the submissions filed 10 July 2007 and 09 August 2007 as a renewed petition under 37 CFR 1.47(a). The petition was dismissed without prejudice for failing to provide an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

On 28 September 2007, applicants submitted the instant renewed petition under 37 CFR 1.47(a), which was accompanied by four declarations of inventors.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As noted in the decision mailed 10 July 2007, item (1) has been met.

As noted in the decision mailed 05 September 2007, items (2) and (3) have been met as well.

Item (4) has now been met. The declarations of inventors filed 28 September 2007 are in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, applicants' renewed petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application, including the accordation of a 35 U.S.C. §§371(c)(1), (c)(2), and (c)(4) date of **28 September 2007**.



Daniel Stemmer

Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

Telephone: (571) 272-3301

Facsimile: (571) 273-0459